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THE STATE OF TEXAS
Plaintiff,

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IN THE DISTRICT COURT OF

V.

TRAVIS COUNTY, T E X A S

CLUB INVESTORS OF TEXAS, INC.
D/B/A SPORTSRIDGE ATHLETIC CLUB
Defendant.

_____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, STATE OF TEXAS, acting by and through the Attorney General of Texas, Greg Abbott ("State" or "Plaintiff"), complains of CLUB INVESTORS OF TEXAS, INC. D/B/A SPORTSRIDGE ATHLETIC CLUB ("Defendant"), and for cause of action would respectfully show as follows:

DISCOVERY CONTROL PLAN

1. The discovery in this case is intended to be conducted under Level 2 pursuant to TEX. R. CIV. P. 190.2(b)(3); 190.3(a).

JURISDICTION

2. This action is brought by Attorney General Greg Abbott, through his Consumer Protection and Public Health Division, in the name of the State of Texas and in the public interest under the authority granted him by § 17.47 of the Texas Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. & COM. CODE ANN. § 17.41 *et seq.* (Vernon 2002 and Supp. 2004) ("DTPA") upon the grounds that the Defendant has engaged in false, deceptive and misleading acts and practices in the course of trade and commerce as defined in, and declared unlawful by, §§ 17.46(a) and (b) of the DTPA.

3. This action is further brought by Attorney General Greg Abbott, through his Consumer Protection and Public Health Division, in the name of the State of Texas under the authority granted him by § 702.552 of the Texas Health Spa Act, TEX. OCC. CODE ANN. § 702.001 *et seq.* (Vernon Supp. 2002) (“HSA”) upon the grounds that Defendant has engaged in actions declared to be violations of the HSA.

DEFENDANT

4. Defendant CLUB INVESTORS OF TEXAS, INC. is a Texas corporation which does business in Texas as alleged in detail below under the name “SportsRidge Athletic Club.” Defendant may be served with process by serving its registered agent, Donald Ishmael, at 1600 Jay Ell Drive, Richardson, Texas 75081.

VENUE

5. Venue of this suit lies in TRAVIS County, Texas, because venue for suits brought under HSA § 702.552 is expressly authorized in Travis County, Texas.

PUBLIC INTEREST

6. Because Plaintiff State of Texas has reason to believe that Defendant has engaged in, and will continue to engage in, the unlawful practices set forth below, Plaintiff has reason to believe the Defendant has caused adverse effects to legitimate business enterprises which lawfully conduct trade and commerce in this State, and that imminent harm exists in that Defendant will continue to cause such adverse effects.

TRADE AND COMMERCE; SELLER

7. Defendant has, at all times described below, engaged in conduct which constitutes “trade” and “commerce” as those terms are defined by DTPA § 17.45(6).

8. Defendant has, at all times described below, engaged in conduct as a “seller” as that term is defined by HSA § 702.003(13).

ACTS OF AGENTS

9. Whenever in this Petition it is alleged that Defendant did any act, it is meant that:

- A. Defendant performed or participated in the act, or
- B. Defendant’s officers, agents, or employees performed or participated in the act on behalf of and under the authority of the Defendant.

NOTICE BEFORE SUIT

10. Pursuant to DTPA § 17.47(a), the Consumer Protection and Public Health Division informed Defendant in general of the alleged unlawful conduct described below, at least seven days before filing suit.

SPECIFIC FACTUAL ALLEGATIONS

11. Defendant owns and operates “SportsRidge Athletic Club,” a health spa located at 1600 Jay Ell Drive, Richardson, Texas 75081. Defendant has not applied for, nor has it obtained, a health spa certificate of registration from the Texas Secretary of State. Defendant further has not filed the statutorily required security of \$20,000.00 with the Texas Secretary of State. On October 26, 2004, Defendant was notified by the Texas Secretary of State of the registration and security requirements of the HSA. By continuing to operate as a health spa with neither a certificate of registration nor a \$20,000.00 security, Defendant has made the implicit misrepresentation that they are operating in accordance with the laws of the State of Texas.

VIOLATIONS OF THE HEALTH SPA ACT

12. The State incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this Petition.

13. Defendant, as alleged and detailed above, has operated a health spa or offered for sale, or sold, memberships in a health spa without holding a health spa operator's certificate of registration, in violation of HSA § 702.101.

14. Defendant, as alleged and detailed above, has failed to maintain a surety bond with the Texas Secretary of State, or other security as prescribed by the Secretary, in the amount of \$20,000.00, in violation of HSA § 702.151.

VIOLATIONS OF THE DECEPTIVE TRADE PRACTICES ACT

15. The State incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this Petition.

16. Defendant, as alleged and detailed above, has engaged in false, misleading, or deceptive acts or practices in the conduct of trade or commerce, in violation of DTPA §17.46(a).

17. Defendant, as alleged and detailed above, has caused confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services, in violation of DTPA § 17.46(b)(2).

18. Defendant, as alleged and detailed above, has represented that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not, in violation of DTPA § 17.46(b)(5).

19. Defendant, as alleged and detailed above, has represented that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law, in violation of DTPA § 17.46(b)(12).

20. Defendant, as alleged and detailed above, has violated the HSA, and such violations are specifically made false, misleading, or deceptive acts or practices in violation of the DTPA, pursuant to HSA § 702.403.

PRAYER

21. Because Defendant has engaged in the unlawful acts and practices described above the Defendant has violated the law as alleged in this Petition.

22. WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that upon final hearing a permanent injunction be issued, restraining and enjoining Defendant, its officers, agents, servants, employees, attorneys, and any other person in active concert or participation with Defendant, from engaging in the following acts or practices:

- A. Operating a health spa, or offering for sale, or selling, a membership in a health spa unless, for each location of the health spa in the State of Texas, Defendant holds a health spa operator's certificate of registration, as required by HSA § 702.101;
- B. Operating a health spa, or offering for sale, or selling, a membership in a health spa unless, for each location of the health spa in the State of Texas, Defendant files a surety bond with the Texas Secretary of State, or posts other security as prescribed by the Secretary, in the amount of

\$20,000.00, as required by HSA § 702.151, unless they have obtained an exemption under the HSA; and

- C. Operating a health spa, or offering for sale, or selling, a membership in a health spa unless, for each location of the health spa in the State of Texas, Defendant posts the health spa operator's certificate of registration or certificate of exemption in a conspicuous place at each registered location as required by HSA § 702.105.

23. Plaintiff further requests that upon final hearing this Court award such relief as the Court finds necessary to redress injury to consumers including, but not limited to, restitution of monies paid by consumers; and further order Defendant to pay to the State of Texas:

- A. Civil penalties of up to \$20,000.00 per violation of the DTPA;
- B. Civil penalties of \$1,000.00 per violation not to exceed a total of \$25,000.00 for violations of the HSA;
- C. Pre-judgment and post-judgment interest on all awards of restitution, damages, or civil penalties, as provided by law; and
- D. All costs of Court, costs of investigation, and reasonable attorney's fees pursuant to TEX. GOVT. CODE ANN. § 402.006(c).

24. Plaintiff further prays for such other relief to which Plaintiff may be justly entitled.

Respectfully submitted,

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